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Supreme Court, U.S.
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No. 03-395

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI - PETITIONER

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael T. Sadlowski
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56 pp

QUESTIONS PRESENTED

INTRODUCTION

There is a most serious conflict of the United States Courts and a ruling of the Massachusetts Supreme Judicial Court regarding police searches of a citizen's single family home. The Massachusetts Supreme Judicial Court ruled in a 1994 case that for a search to be reasonable, the search warrant shall bear authorization and be served in hand. The United States Court of Appeals for the First Circuit by its decision in my case, established the following:

- a search warrant does not need to bear authorization;
- a search warrant does not need to be served in hand;
- a search warrant does not need to be in the possession of any person at and when conducting the search;
- it does not matter if the police served in hand a manufactured search warrant that was never issued by the court and is not on file with the court.

The decision of the U.S. Court of Appeals is devastating to citizens as their protection under the Fourth Amendment has almost totally disappeared.

Whether Fourth Amendment rights are secure or not is fundamental with each and every search warrant. Most search warrants are state versions versus federal versions. As such, rulings of state courts should be an integral part of rulings by U.S. courts for the protection of citizens' Fourth Amendment rights and the protection under 18 U.S.C. Rule 41(d) should not be undermined as has occurred in this case.

QUESTIONS

Does the serving in hand by police of a manufactured search warrant that was never issued by the court, bearing no

authorization, never filed with the court and where such document was used to conduct the search of a single family home, constitute a reasonable or unreasonable search?

And further, was such search reasonable or unreasonable where a search warrant that appears on file (alleged by the petitioner and others to have issued after the search) is different than the manufactured search warrant served in hand at the residence and such manufactured search warrant is not a copy of the search warrant on file?

If a search warrant is written naming a particular person who is a boarder living in a boardinghouse, can the rooms of other boarders be searched where no probable cause appears in the affidavit for application for search warrant for any of the other boarders (all members of a family in a single family residence can be considered similar in their rights to be secure as boarders would be in a boardinghouse)?

If personal areas and personal effects of a person are searched and where no probable cause is established in the affidavit for application for search warrant, is the search reasonable or unreasonable?

What is the clear definition of "served" as it pertains to a search warrant?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Plaintiffs-appellants were	Michael Sadlowski Jocelyn Sadlowski Suzanne Sadlowski
Defendant-appellee was:	Louis Benoit

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[1]Opinion and report contain material misstatements and left out various material inputs by plaintiffs-appellants.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Commonwealth v Guaba, 417 Mass (1994)	8, 12
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts

The opinion of the United States Court of Appeals for the First Circuit appears at Appendix A.

The denial of the Petition for Rehearing *En Banc* and Petition for Rehearing appears at Appendix B.

The Report and Recommendation of the United States district court appears at Appendix C.

The adoption of the Report and Recommendation appears at Appendix D.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals for the First Circuit decided my case was March 31, 2003.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 8, 2003, and a copy of the order denying rehearing appears at Appendix B.

The petitioner, who is *pro se*, mailed by priority mail petitions for writ of certiorari on July 18, 2003. Petitioner was of the belief that by being *Pro se*, he could use the 8 1/2-by 11 inch format and petitioner included the docketing fee. The clerk's office returned the petitions and stated that if petitioner pays the docket fee, then the booklet format must be followed or else resubmit according to *In Pauperis* requirements. The letter of the clerk's office was dated July 23, 2003 and mentioned that the petitioner is to resubmit petition within 60 days from date of the letter.

A sample booklet was mailed and received on August 18th at the Supreme Court of the United States. Petitioner received a response on August 27th.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment [U.S. Constitution] – 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

STATEMENT OF THE CASE

On Friday afternoon, at around 2:40 P.M., on August 23, 1996, Leominster police detective Louis Benoit, led and directed a search of the single family home of Michael and Jocelyn Sadlowski at 85 Harvard Street, Leominster, Massachusetts.

Suzanne Sadlowski was sitting on the front steps. The police van, gray and unmarked, drove quickly down the long driveway and over the grass and sidewalk right up to the front steps. With the van fast approaching her, Suzanne became scared and went into the house for fear of getting run down. As she was closing the door, it was pushed open by later to be identified police officers. There were six Leominster police officers and a state police officer with a K-9 German shepherd.

Suzanne Sadlowski (age 16 years) and Jeffrey Sadlowski (age 18 years), children of Michael and Jocelyn, were home at the time. Detective Benoit informed them in the kitchen that he and the others were Leominster police. A document labeled as search warrant was given to Suzanne to read and it was showed to Jeffrey. Shortly thereafter, Jocelyn Sadlowski, returned home from an errand to get some fast food. Jocelyn Sadlowski was given the document labeled as search warrant to read. She obtained her eyeglasses and examined and read the document labeled as search warrant. While the search was being conducted, detective Benoit made threatening statements of tearing the house apart and tearing the walls down. Jeffrey and Suzanne were arrested. According to the state police officer's report, approximately 34 grams of marijuana was seized. This amount is a little over one ounce and less than that of a pack of cigarettes.

Suzanne pleaded not delinquent. For expediency, an agreement was worked out where Suzanne agreed to a

chapter 276 section 87 which is a pretrial probation. In this way, if no further infractions occurred within six months the case would be dismissed. If there was an infraction, then the case would proceed to trial. No infractions occurred.

Michael Sadlowski returned home later in the day, around 5:00 P.M., from work and found the house a mess with chairs, sofas, beds apart or overturned, dressers with drawers removed and dumped on the floor, papers, kitchen utensils and contents of kitchen cabinets strewn over the floor, living room furniture turned over, personal effects (attaché case) of Michael Sadlowski searched and file cabinet of Michael and Jocelyn Sadlowski was opened and searched. As there was the K-9 dog to sniff drugs (best for marijuana), there was no need to rummage and ransack the house. The K-9 dog could locate whatever marijuana was present. The search warrant currently on file only specifies marijuana as the contraband being searched for. It is obvious that the police were looking for other drugs that the dog could not detect. Benoit acted in "bad faith" in his actions. Not only did the police use a manufactured search warrant to conduct the search, but their search went far beyond the scope of the search warrant that is currently on file. Tearing beds apart, dumping out dresser drawers, turning over a reclining chair and sofa, emptying items from kitchen cabinets on the kitchen floor, for example, were totally unnecessary; it was done by the police to get their jollies and cause distress to the Sadlowski's.

Michael Sadlowski inquired with Jocelyn and Suzanne as to the description of the document labeled as search warrant that was given to them to read and examine. Michael Sadlowski went to the Leominster district court clerk's office the following Monday, August 26, 1996, to get a copy of the search warrant. Michael was informed the search warrant had not been returned. Then later in the afternoon around 3:30 P.M., Michael Sadlowski returned to get a copy. He was informed that the search warrant was not available. Later, it was learned that the search warrant was stamped as

having been received at 1:30 P.M. on Monday. Michael Sadlowski returned on Wednesday and obtained a copy. At that time upon reviewing the copy with Jocelyn and based on the previous inputs from Jocelyn and Suzanne, it became evident that the document labeled as search warrant that was served at the residence was different than the search warrant on file.

The document labeled as search warrant served in hand by Louis Benoit was not one using the standard form approved by the court. It was a manufactured document. It had no authorizations. The format was different. There were colored sections in the document, like the words "SEARCH WARRANT" in orange and the section describing the items to be searched for in blue ink. The section regarding the single family residence "which is occupied by and/or in the possession of" in the middle of the page was blank on the document served at the residence whereas the search warrant on file has the name of Jeffrey Sadlowski on it in two places in the middle of the page. The document labeled as search warrant served in hand by Benoit is not on file with the court. It is the belief of the Sadlowski's that the manufactured search warrant was used to perform an exploratory search and then whatever was found was used to finish writing up the affidavit and application for search warrant. If the search warrant on file had been issued prior to the search, then it would have been the one served in hand at the residence. But it was not. At the deposition of Louis Benoit, he demonstrated how he folded the document labeled as search warrant that he served in hand at the Sadlowski residence. The folded paper, approximately the size of a search warrant, was marked as an exhibit. A private investigator examined the folds in the search warrant on file. There is not a corresponding set of folds of the folded paper versus the search warrant on file. At Benoit's deposition, by information given under oath, Benoit claims that the search warrant served in hand was the search warrant that is on file. A reasonable person would conclude, based on there being

no corresponding set of folds, that the search warrant on file was not the one served in hand at the Sadlowski residence.

There are improprieties relevant to the search warrant that is on file. The signed name of the first justice in the witness box is forged. We have proof of this from the judge. The name of the first justice is inserted in the witness box. Only printed or typed names being acceptable. No-one is given the authorization to sign the justice's name. The signature of the clerk-magistrate on the return is forged based on information obtained from his deposition. Based on the deposition of Clerk-Magistrate Philip B. O'Toole, if his deposition is assumed to be truthful, there are many if not hundreds of search warrants in Leominster that have been illegally issued as they bear his forged signature. And it is not really known as to the assistant clerk-magistrate's signature as being his as his printed name is misspelled and others in the court sign his name on various documents. It is further known that the detective who applied for the search warrant went to the residence of the assistant clerk-magistrate at 6:00 P.M. on the same day the search was executed at 2:40 P.M.

The Massachusetts General Laws, chapter 276 section 3a mentions that the search warrant that is issued is to be served and the same returned. The federal rules on search and seizure, Rule 41 of Title 18 of the U.S. Code, and Massachusetts General Laws are quite similar as federal rule 41 reveals that the search warrant issued shall be served and returned. The federal rule 41(d) also states that a copy of the search warrant *shall* be left with the person from whom or whose premises the property was taken and a receipt given of the items taken. Detective Benoit neither left a copy of the document labeled as search warrant that he served in hand and nor did he leave a receipt of items taken.

The Sadlowski's have established material facts in affidavits, depositions, testimony at the motion for summary judgment hearing. Jocelyn Sadlowski's affidavit (Appendix

E) and Suzanne Sadlowski's section of her deposition (Appendix F) were included in the Plaintiffs Amended Opposition to Defendant Benoit's Motion for Summary Judgment. In addition, the work of the private investigator for the Sadlowski's and the deposition of Benoit further reveal that the search warrant on file at the Leominster District Court (not a federal court) was never served at the Sadlowski residence. The search warrant on file is based on a preprinted form where the pre-printed lettering is in brown color. The words search warrant, are in large typeface, around 26 points and to the left half of the top of the page. There are check boxes and lines to be filled in and sections for signatures at the bottom. The search warrant is the second page of a multipart form with the application for search warrant the top page. There is carbon paper between the two pages for the upper two thirds of the page (does not cover the signature sections at the bottom of the page). Most of the information filled in on the upper two thirds of the application for search warrant page would transfer to and appear in dark gray on the search warrant due to the carbon paper between the application page and the search warrant page.

According to the ruling of the Massachusetts Supreme Judicial Court in the case of *Commonwealth v Guaba*, 417 Mass (1994), it reveals that the search performed by Benoit was unreasonable. The U.S. Court of Appeals for the First Circuit states that the facts identified by the Sadlowski's are not sufficient to constitute a violation of Fourth Amendment rights. There is a significant difference between the decision of the U.S. Court of Appeals for the First Circuit in the Sadlowski case and the ruling of the Massachusetts Supreme Judicial Court if applied to the Sadlowski case. Both the Massachusetts laws and federal rules state that the search warrant that is issued is to be served. The federal rule, Rule 41(d) is quite definitive as it states that a copy of the search warrant shall be left. The document labeled as search warrant that was served in hand by Benoit was manufactured

and never issued by the court and never returned to the court. It was an unlawful document and as such, an unreasonable search was performed and thus, it violated the Sadlowski's Fourth Amendment rights.

In the petitioner's opinion, there was not sufficient cause to justify the search of the home and the home is in the possession of Michael and Jocelyn Sadlowski. There are a number of material statements in the affidavit for application for search warrant that can be challenged and shown as false, impacting the reliability of such affidavit. The police promise leniency to their informants and use informants, as in this case, who are repeat convicted drug criminals who prey upon persons at AA/substance abuse treatment program meetings.

The search warrant on file is invalid, not only as it was not the one served in hand at the Sadlowski residence, but it is facially defective for at least the following: 1) the judge's signature in the witness box is forged and 2) the identification of who the home is "occupied by and/or in the possession of" is knowingly false as it failed to list all the occupants and especially the parents as they are the primary occupants of the home. The affidavit for application for search warrant currently on file fails to provide probable cause for search of the entire premises and greater particularity should have been described so as not to infringe on the Fourth Amendment rights of Michael, Jocelyn and Suzanne Sadlowski. The primary occupants of the home and the home is in the possession of Michael and Jocelyn Sadlowski and not Jeffrey Sadlowski. Michael, Jocelyn and Suzanne were conveniently left off as occupants. They were known to be occupants. The City of Leominster "Street Listing" document that the police have, lists the persons at the address. If the search warrant on file had all family members listed on the line for "occupied by and/or in the possession of", it would not have been signed, at whenever time it was signed by whomever. The search warrant on file

is overly broad as to the place to be searched and it would result in the undue invasion of the personal privacy of Michael, Jocelyn and Suzanne Sadlowski. It is overly broad in designating all persons present to be searched. This would allow the search of any family member present and there was no cause established in the affidavit to justify any such search. This makes the search warrant on file defective. For the items to be searched, a commonly used description was used.

There was absolutely no grounds in the affidavit for application for search warrant that is on file (petitioner alleges it was completed after the search) for cause of any kind to search the following:

1. personal effects of Michael, Jocelyn and Suzanne Sadlowski (for example, Michael Sadlowski's attaché case and Michael and Jocelyn Sadlowski's file cabinet;
2. personal areas (bedrooms) of Michael, Jocelyn, and Suzanne Sadlowski;
3. kitchen area as it infers an area under control of Michael Sadlowski and Jocelyn Sadlowski.

The plaintiffs appealed and submitted the appeal on two issues:

1) collateral estoppel (this was the primary basis for which summary judgment was granted to defendant Benoit);
2) threatening manner by Louis Benoit (which also addressed Rule 56C).

The U.S. Court of Appeals for the First Circuit rendered its decision on March 31, 2003. The issue of collateral estoppel was not addressed by the court. This was a key issue. There is a most critical omission in the opinion as a case cited in plaintiffs-appellants' brief regarding a ruling of the Massachusetts Supreme Judicial Court was not included in

the items listed in the opinion as to plaintiffs-appellants reasons why collateral estoppel does not apply.[1] Even a copy of the case was included in the addendum with the plaintiffs-appellants' brief. The threatening manner issue was addressed.

The court chose to look at the case on other grounds. The court chose to make its decision without a hearing; therefore, the case could not have been fairly presented for a decision to be made. Key information like transcripts of hearings, transcripts of depositions and transcript of the motion for summary judgment hearing were not in the record. There was no transcript of the motion for summary judgment hearing as it was not necessary for the matters under appeal. However, it would have been important to the matter of the court addressing "other grounds". The court panel claimed that there were not material facts sufficient to support a violation of Fourth Amendment rights, yet appellants revealed material facts of a manufactured search warrant (not issued by the court, bearing no authorizations and not on file) being used to conduct the search. The panel chose to disregard the appellants' material and genuine facts of a manufactured search warrant being served in hand at the residence. The appellants filed a petition for rehearing *en banc* and for rehearing. Both were denied.

[1] The Massachusetts Supreme Judicial Court has revealed in a case that the denial of a probable cause finding by a judge after probable cause hearing in a criminal matter does not deny the private person who filed the application for criminal complaint from the right to a civil action (*Manning v Municipal Court of Roxbury District*). As such, there is no preclusion bar. The U.S. district court looked at and cited the same case. However, the court missed the critical decision in the case which made collateral estoppel and res judicata non-issues. (See Report and Recommendation, pg. 34)

REASONS FOR GRANTING THE PETITION

Preservation of Fourth Amendment rights impacts all those citizens of the United States who live in a home or other private premise and it is of paramount importance for citizens in their person, personal effects, property and private premises to be secure from unreasonable searches by law enforcement and by the use of unlawful, manufactured documents labeled as search warrant. It is further compelling that the U.S. Court of Appeals decision undermines the protection of citizens' rights to receive at the time of the search, a copy of the search warrant as is stated in 18 U.S.C. Rule 41(d) and stated in the Circuit Court search warrant in Division III in Missouri.

Resolution of the serious disconnect between the decision of the United States Court of Appeals for the First Circuit and the Massachusetts Supreme Judicial Court is the critical need for the Supreme Court of the United States to act in this case.

By the decision of the U.S. Court of Appeals for the First Circuit, Fourth Amendment rights are reduced to almost zero. Most citizens throughout the United States are impacted. Most search warrants in the state are state versions. Citizens of Massachusetts have strong protection of being secure in their home and their personal property from unreasonable searches by law enforcement per the ruling of the Massachusetts Supreme Judicial Court. The court ruled that for a reasonable search, a search warrant must bear authorization and be served in hand. See *Commonwealth v Guaba*, 417 Mass (1994). This provides proof, although not the best, that a search warrant has issued prior to the search. Otherwise, the door becomes wide open for police gross misconduct and for almost total elimination of rights of citizens under the Fourth Amendment.

An explicit set of criteria is greatly needed to define what constitutes a reasonable search. The Massachusetts Supreme

Judicial Court has done so. The U.S. Courts have no clear criteria. Rule 41 and 41(d) have been interpreted so loosely that the rule is almost meaningless as to providing protection to citizens to be secure in their home from unreasonable searches. The decision of the U.S. Court of Appeals for the First Circuit has, in effect, invalidated search warrant forms used in other U.S. Circuit Courts, like in Circuit Court, Division III, in Missouri where it is stated in the search warrant that a copy of the search warrant is to be provided to the person from whom property was taken or leave a copy at the premises where the property was taken. And the Missouri Circuit Court form has space designated on it for the date and time of issuance to be filled in by the issuing judge. In at least the Circuit Court Division III, citizens' Fourth Amendment protection is being negatively impacted by the decision of the U.S. Court of Appeals for the First Circuit.

The petitioner proposes the Court adopt the following:

> The search warrant that is issued and bearing authorization with date and time of issuance shall be served in hand with a copy left with whom or whose premises from which the property was seized and the same served warrant returned to the court issuing the search warrant.

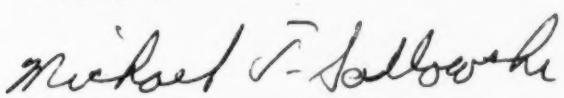
This definition for the process after a search warrant is issued is easily implemented for a reasonable search to occur.

CONCLUSION

The petition for a writ of certiorari should be granted, citizens' protection under the Fourth Amendment against searches and for being secure in their homes restored and strengthened, and thereby overturn the decision of the U.S. Court of Appeals for the First Circuit.

Respectfully submitted,

Petitioner



Michael T. Sadlowski

APPENDIX A

OPINION OF UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States Court of Appeals
For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants.

v.

LOUIS BENOIT,
Defendant, Appellee.

JUDGMENT

Entered: March 31, 2003

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

RICHARD CUSHING DONOVAN

Richard Cushing Donovan, Clerk

[cc: Mr. Sadlowski and Mr. Louison.]

Not for Publication in West's Federal Reporter
Citation Limited Pursuant to 1st Cir. Loc. R. 32.3

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M Gorton, U.S. District Judge]

Before
Campbell and Stahl,
Senior Circuit Judges,
and Lynch, Circuit Judge.

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski on brief pro see

Douglas I. Louison, Stephen C. Pfaff and Merrick. Louison & Costello on brief for appellee.

March 31, 2003

Per Curiam. Plaintiffs-appellants Michael, Jocelyn and Suzanne Sadlowski appeal from the district court's grant of summary judgment dismissing their federal claims pursuant to 42 U.S.C. §1983, against defendant Louis Benoit and remanding their state law claims to state court. "We review a summary judgment de novo, viewing the record in the light most favorable to the nonmoving party to determine whether there exists a genuine issue of material fact." Muniz Cortes v. Intermedics, Inc., 229 F.3d 12 (1st Cir. 2000).

In their brief, appellants base their challenge to the grant of summary judgment on two alleged errors by the district court: 1) in ruling that plaintiffs' Fourth Amendment claim based on a search pursuant to an invalid warrant was precluded under the doctrine of collateral estoppel, and 2) in granting summary judgment sua sponte on the claim contained in ¶ 6 of the amended complaint (threatening manner of the search).

I. Claim That Search Pursuant to Invalid Warrant Violated Plaintiffs' Fourth Amendment Rights

The district court held that the claim that plaintiffs' Fourth Amendment rights were violated by defendant's search of their residence pursuant to an invalid warrant was precluded by a determination by the Leominster District Court, denying for "insufficient evidence" plaintiffs' application for issuance of a criminal complaint against defendant Louis Benoit, pursuant to Mass. Gen. Laws ch. 218 §§ 32 - 35A. On appeal, the Sadlowskis argue that the court erred in applying issue preclusion because 1) the issues were not identical, 2) the parties were not the same, and 3) plaintiffs did not receive a "full and fair hearing" in state court.

We need not resolve the problematic question of

whether issue preclusion applies here, because we affirm on the alternative ground that plaintiffs have failed to meet their burden of showing a genuine issue of material fact as to the claim deemed precluded. See Four Corners serv. Station, Inc. v. Mobil Oil Corp., 51 F.3d 306, 314 (1st Cir. 1995) (appellate court is free to affirm summary judgment on any ground supported by the record and fairly presented).

"Once a defendant moves for summary judgment and places in issue the question of whether the plaintiff's case is supported by sufficient evidence, the plaintiff must establish the existence of a factual controversy that is both genuine and material. To carry this burden, the plaintiff must 'affirmatively point to specific facts that demonstrate the existence of an authentic dispute.'" Melanson v. Browning-Ferris Indus., Inc., 281 F. 3d 272, 276 (1st Cir. 2002).

In opposing summary judgment, plaintiffs relied upon deposition testimony and affidavits of Jocelyn and Suzanne Sadlowski. At best, that evidence established a genuine factual controversy as to: 1) whether the warrant presented to plaintiffs at the time of the search was signed by a magistrate and had Jeffrey Sadlowski's name on it, and 2) whether it differed in format from the warrant authorizing the search of their home which was on file with the Leominster District Court. However, neither factual controversy is material to plaintiffs' Fourth Amendment claim.

The only specific facts set forth by plaintiffs in support of their claim are Jocelyn and Suzanne Sadlowski's recollections that the warrant they were shown at the time of the search (the "Served Warrant") was unsigned, did not contain Jeffrey Sadlowski's name as the occupant, and was different in format from the one they viewed several days later on file with the Leominster District Court (the "Filed Warrant"). They also rely upon evidence indicating that the Filed Warrant contained folds inconsistent with how

defendant demonstrated he would have folded the Served Warrant.

Plaintiffs testified in their depositions that the Served Warrant included a description of the items to be searched for and the place to be searched (the Sadlowskis' home) and they do not contest the adequacy of those descriptions. In their opposition to summary judgment, plaintiffs specifically denied that they were alleging that the affidavit submitted in support of the warrant application was "made-up or invalid." The record includes a copy of the application for the warrant to search the Sadlowski residence which is dated the day of the search and signed by Assistant Clerk Magistrate Raymond A. Salmon, Jr.[1] Plaintiffs have not argued that the application and affidavit in support thereof did not establish probable cause to search their home.[2]

Under these circumstances, the contested facts identified by plaintiffs, if proven, would not establish a violation of their Fourth Amendment rights. The lack of a signature on the Served Warrant would not render the search unconstitutional. See United States v. Lipford, 203 F.3d 259, 270 (4th Cir. 2000); United States v. Kelley, 140 F.3d 596, 602 n. 6 (5th Cir. 1998). The Fourth Amendment does not require that a search warrant "name the person from whom the things will be seized." Zurcher v. Stanford Daily, 436 U.S. 547, 555 (1978). Plaintiffs' contention that the defendant did not comply with Mass. Gen. Laws ch. 276, §3, prescribing the methods for issuance of a search warrant, is also insufficient to support a Fourth Amendment claim. See

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[1] The record does not include a copy of the supporting affidavit which was incorporated in the application.

[2] Plaintiffs' allegation that the affidavit in support of the search warrant was prepared after the search had been completed is entirely unsubstantiated.

White v. Olig, 56 F.3d 817, 820 (7th Cir. 1995). We conclude that there is no trialworthy issue as to this Fourth Amendment claim and, therefore, summary judgment was appropriate.

II. Dismissal of Claim that Officer's Threatening Manner Amounted to Constitutional Violation

Appellants challenge the grant of summary judgment on the claim that the "threatening manner" in which defendant conducted the search of Suzanne Sadlowski's bedroom violated her constitutional rights. Even assuming that defendant's summary judgment motion did not encompass this claim, "[i]t is apodictic that trial courts have the power to grant summary judgment sua sponte." Rogan v. Menino, 175 F.3d 75, 79 (1st Cir. 1999). Two conditions precedent must be satisfied before a trial court may enter summary judgment sua sponte: "(1) the case must be sufficiently advanced in terms of pretrial discovery for the summary judgment target to know what evidence likely can be mustered, and (2) the target must have received appropriate notice." Id. The ten-day notice requirement of Rule 56 applies to *sua sponte* grants of summary judgment. Id. at 80. "In the context of a *sua sponte* summary judgment, 'notice' means that the targeted party 'had reason to believe the court might reach the issue and received a fair opportunity to put its best foot forward.'" Leyva v. On the Beach, Inc., 171 F.3d 717, 720 (1st Cir. 1999) (citation omitted).

Here, both conditions precedent were satisfied. Discovery had been underway for more than a year when defendant moved for summary judgment. The plaintiffs were given notice as of the date of the magistrate judge's Report

and Recommendation (February 15, 2002) that the court was considering entering summary judgment as to the "threatening manner" claim. In their opposition to the Report, plaintiffs could have argued that there were disputed facts concerning that claim. Instead, they merely pointed out that defendant had not moved for summary judgment as to that specific claim. Summary judgment entered on March 1, 2002, more than ten days after plaintiffs had received notice. Therefore, the district court did not err in sua sponte entering summary judgment as to the claim contained in paragraph 6 of the amended complaint.[3]

Affirmed.

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[3] On the merits, appellants do not dispute the district court's ruling that their allegations "do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably." Instead, they argue only that defendant's conduct violated Mass. Gen. Laws ch. 12, §11i. "By the terms of the statute itself, a section 1983 claim must be based upon a *federal* right." Ahern v. O'Donnell, 109 F.3d 809, 815 (1st Cir. 1997).

APPENDIX B

ORDER DENYING APPELLANTS PETITION FOR REHEARING EN BANC AND PETITION FOR REHEARING

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

Before

Boudin, Chief Judge,
Campbell, Senior Circuit Judge,
Selya, Circuit Judge, Stahl, Senior Circuit Judge,
Lynch, Lipez and Howard, Circuit Judges.

ORDER OF COURT

Entered: May 8, 2003

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing, and a majority of the judges in regular active service not having voted to rehear the case en banc, it is ordered that the petition for rehearing and petition for rehearing en banc are denied.

By the Court:
RICHARD CUSHING DONOVAN
Richard Cushing Donovan, Clerk.

cc: Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX C

REPORT AND RECOMMENDATION ON DEFENDANT BENOIT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL SADLOWSKI, JOCELYN SADLOWSKI and SUZANNE SADLOWSKI, Plaintiffs,	)	CIVIL ACTION NO. 98-40194-NMG
vs.	)	
LOUIS BENOIT, Defendant,	)	

REPORT AND RECOMMENDATION
February 15, 2002

SWARTWOOD, M.J.

Nature of the Proceeding

This matter was referred to me by Order of Reference dated August 3, 2001, for Findings and Recommendations pursuant to 28 U.S.C. §636(b) (1) (B) on Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122).

Nature of the Case

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski, proceeding *pro se,* have filed an Amended Complaint (Docket No. 35) asserting claims against Sergeant Louis Benoit of the Leominster Police Department. Construing the Amended Complaint liberally, as I am

required to do, see Ashmond v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997), I find that the Plaintiffs are attempting to assert: federal claims against Sergeant Benoit for violation of the civil rights act, 42 U.S.C. § 1983, as a result of the alleged unlawful search of their residence and/or personal property, the resultant alleged unlawful arrest of Suzanne Sadlowski for possession of a controlled substance found during the search, and the alleged violation of Suzanne Sadlowski's constitutional rights by intimidating her during the search and failing to Mirandize her in connection with her arrest; and corresponding state civil rights claims and state law tort claims for intentional infliction of emotional distress; negligent infliction of emotional distress; invasion of privacy; and defamation (Suzanne Sadlowski).

Findings of Fact

1. On August 23, 1996, Sergeant Benoit executed a search warrant at 85 Harvard, Street Leominster, Massachusetts, where the Plaintiffs reside. Def., Benoit's Mem. of L. in Sup. of His Mot. for Sum. J. (Docket No. 123) ("Def's Mem."), Ex. B (Affidavit of Louis Benoit) ("Benoit Aff."), at ¶2. The search warrant was issued to Detective Siciliano of the Leominster Police department that same day. Pls' Amended Opp. To Def. Benoit's Mot. For Sum. J. (Docket No. 141) ("Pls' Opp."), at Ex. K.

2. At the time Sgt. Benoit executed the warrant he showed it to the persons on the premises, Jocelyn Sadlowski, Jeffrey Sadlowski and Suzanne Sadlowski. Benoit Aff., at ¶3.

3. After the search was completed, Detective Siciliano of the Leominster Police Department filled in the back of the search warrant indicating what items were seized, when the execution of the warrant took place and the time the warrant was executed. Id., at ¶4.

4. Detectives Siciliano and Plume both signed off on

the search warrant. Id., at ¶¶4, 5. Detective Siciliano then filed the warrant with the office of the clerk magistrate in the Leominster District Court. Id., at ¶5. The warrant filed in the Leominster District Court was assigned Docket No. 9661SW-29 ("Search Warrant"). See Pls' Opp., at Ex. O.

5. On February 20, 2001, Sergeant Benoit viewed the Search Warrant and determined that it was the same search warrant that he executed at the Sadlowski's residence on August 23, 1996. Benoit Aff., at ¶6.

6. Jocelyn Sadlowski and Suzanne Sadlowski have testified that they both saw the search warrant which Sgt. Benoit and other members of the Leominster Police Department executed at their residence. Both testified that the document that they were shown by Sgt. Benoit at that time of the search had the words "search warrant" centered at the top in orange letters. Pls' Opp., Ex B (Deposition of Jocelyn Sadlowski) (" J. Sadlowski Dep."), at p. 30-31; Ex. C (Deposition of Suzanne C. Sadlowski) ("S. Sadlowski Dep."), at p. 23. Both Jocelyn Sadlowski and Suzanne Sadlowski recalled that there was typewritten information in black ink on the document shown to them and Mrs. Sadlowski recalled some handwritten information in blue ink. Mrs. Sadlowski does not recall any signatures on the document shown to her or any boxes with check marks. Neither Mrs. Sadlowski nor Suzanne Sadlowski could recall the substance of the contents of the document shown to them, except that Mrs. Sadlowski testified that the document contained a description of what the police were looking for and Suzanne Sadlowski recalls seeing the word "marijuana". J. Sadlowski Dep., at pp. 31-33; S. Sadlowski Dep, at pp. 24 – 25.[1]

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[1]In support of their contention that the search warrant executed by Sgt. Benoit on August 23, 1996 is not the same warrant that is on file at the Leominster District Court, the Plaintiffs have cited the affidavits of Jocelyn Sadlowski and Suzanne Sadlowski [(Docket Nos. 36 and 37) and Pls' Mem., Exs. D and E]. However, those affidavits are unsworn, that

7. The Search Warrant has the words "search warrant" off-center at the top in brownish letters, includes typewritten and handwritten information and is signed by Raymond Salmon Jr., as Assistant Clerk-Magistrate, and purports to be signed by the First Administrative Justice, "J.J. Curran Jr."[2] Pls' Mem., Ex. O (Copy of Search Warrant).

8. First Justice John Curran, Jr. of the Leominster District Court did not sign the Search Warrant, nor did he review it before it was issued. Pls' Opp., at Ex. N. However, it is common practice in the Leominster District Court to preprint or stamp the name of the presiding judge on search warrants, as a formality. Id.

9. The folds of the Search Warrant do not appear to match the folds in a paper made by Sgt. Benoit at his deposition when he was asked to fold such paper as he would have the search warrant executed at the Sadlowskis' residence on August 23, 1996. Id., Exs. R&S.

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is, they are not signed under the pains and penalties of perjury. Therefore, they cannot be considered for purposes of determining whether there is a genuine issue of material fact. Furthermore, Plaintiff, Michael Sadlowski, has filed an unsworn affidavit in support of the Plaintiffs' motion for summary judgment. Pls' Mem., Ex. G. For this same reason, that affidavit will not be considered. Carmona v. Toledo 215 F.3d 124 (1st Cir. 2000) (to be admissible at summary judgment stage, document must be sworn or certified).

[2]In support of their claim that the warrant is invalid, Plaintiffs assert that the Assistant Clerk-Magistrate's name, which is spelled out under his signature, is misspelled as "Salmun". Therefore, Plaintiffs argue, someone other than Mr. Salmon must have signed the document. This argument is specious. I have reviewed the document and disagree with the Plaintiffs' conclusion that the last name of the Assistant Clerk-Magistrate is spelled out "Salmun". On the contrary, comparing how the last name of the Assistant Clerk-Magistrate is spelled out to how his first name, Raymond (which also contains an "o"), is spelled out, it appears that the last name is correctly spelled as "Salmon", that is, what Plaintiffs have alleged to be a "u" in the last name is an "o".

10. When executing the warrant, Sgt. Benoit told Suzanne Sadlowski that he would tear her room apart. Amended Complaint, at ¶6. Sgt. Benoit dumped out Suzanne Sadlowski's cosmetics in front of her in her bedroom. Id., at ¶7.

11. The living room and kitchen of the Sadlowski residence were thoroughly searched, as was the bedroom and bedroom closet of Michael and Jocelyn Sadlowski. The house was a mess when Michael Sadlowski returned home from work on August 23, 1996. Id., at ¶¶8, 14.

12. Upon completing the search, the police arrested both Suzanne Sadlowski and Jeffrey Sadlowski. Suzanne Sadlowski, who at the time was a minor, was arrested for possession of marijuana after Jeffrey Sadlowski indicated that some marijuana found by the police belonged to her. Pl's Opp., Ex. V, at p. 30. Suzanne Sadlowski was not read her Miranda rights at the time of her arrest. Amended Complaint, at ¶12. Jeffrey Sadlowski pled guilty to possession of a Class D Substance with Intent to Distribute. Def's Mem., Ex. D. Suzanne Sadlowski's case was continued without a finding with no plea pursuant to Mass.Gen.L. ch. 276, §87. Pl's Opp., at Ex. J.

13. Michael Sadlowski and Jocelyn Sadlowski subsequently applied to the Leominster District Court for the issuance of a criminal complaint against Sgt. Benoit and others. Mr. and Mrs. Sadlowski sought a criminal complaint against Sgt. Benoit on the grounds that Sgt. Benoit had served an "invalid, non-official search warrant" for their residence and that he provided false information in the affidavit in support of the warrant. Jocelyn and Michael Sadlowski also filed a motion to have the search warrant declared invalid. Def's Mem., at Exs. C-1 and C-2. The Sadlowskis' applications for the issuance of criminal complaints against Sgt. Benoit and others were denied by the

Clerk Magistrate. Id., Ex. C-3. Justice Kilmartin of the Leominster District Court reviewed the Clerk Magistrate's denial of Mr. and Mrs. Sadlowski's applications for criminal complaints against Sgt. Benoit and others. After a hearing, in which Justice Kilmartin "heard all matters related to [the Sadlowskis'] requests for the issuance of process against various individuals and motions for specific relief", the Sadlowskis' applications for criminal complaints and their pending motions were denied. Id., at Ex. C-5. In refusing to overturn the Clerk Magistrate's decision, Justice Kilmartin agreed with the Clerk Magistrate's determination that there was insufficient evidence to support the issuance of a complaint against Sgt. Benoit. Id., at Ex. C-1.

Discussion
Plaintiffs' Federal Claims
Plaintiffs Section 1983 Claims For Invasion Of Privacy/Illegal Search

The Plaintiffs have not asserted any credible arguments that the Search Warrant is invalid.[3] Instead, the Plaintiffs argue that the document on file at the Leominster District Court is not the search warrant which Sgt. Benoit executed at their residence on August 23, 1996. Sgt. Benoit argues first, that there is no genuine issue of material fact that the document which is on file at the Leominster District Court is valid and is the search warrant executed at the

[3]The Plaintiffs assert that the search warrant on file at the Leominster district is invalid because although the signature of First Justice Curran appears on the document, he never personally signed it and because the Assistant Magistrate- Clerk's name is misspelled. I have previously addressed the latter argument. See note 2, *supra.* As to the former argument, Plaintiffs' own evidence establishes that search warrant's issued in the Leominster District Court are signed under First Justice Curran's name as a matter of formality and that doing so is not improper. See Pls' Opp., at Ex. N.

Sadlowski residence on August 23, 1996. Sgt. Benoit then argues that the Plaintiffs' Section 1983 claims against him for violation of their constitutional rights as the result of his search of their residence/personal property with an alleged invalid warrant are barred by principles of res judicata and/or collateral estoppel as the result of the state court proceedings against him initiated by Mr. and Mrs. Sadlowski. Initially, I will address Sgt. Benoit's argument that Plaintiffs claims are barred by principles of res judicata and/or collateral estoppel.

"Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgement, that decision may preclude a relitigation of the issue in a suit on a different cause of action involving a party to the first case... res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 415 (1980) (internal citations omitted). Furthermore, the rules of collateral estoppel apply to actions brought under Section 1983 and encompass civil or criminal matters determined in state courts. Id., at 105, 101 S.Ct. at 420. Where a party argues that a state court decision must be given preclusive effect in a subsequent federal action, state law determines whether principles of collateral estoppel bar the subsequent federal claim. Bilida v. McCleod, 211 F.3d 166, 170 (1st Cir. 2000).

Under Massachusetts law, "collateral estoppel precludes relitigation of issues determined in prior actions between the parties or those in privity with the parties. Issues precluded under this doctrine must have been actually litigated in the first action and determined by a 'final judgment on the merits'". Sena v. Commonwealth, 417 Mass. 250, 260 (1994). A "final judgment" is one that has been

appealed or as to which an "avenue for review" was available. Id. Initially, I will address whether collateral estoppel bars Mr. and Mrs. Sadlowski's Section 1983 claim against Sgt. Benoit. If I find that it does, I will then address whether privity existed between Mr. and Mrs. Sadlowski and Suzanne such that her claims are also barred.

In this case, subsequent to the search of their residence, Mr. and Mrs. Sadlowski filed an application for a criminal complaint against Sgt. Benoit, pursuant to Mass.Gen.L. ch 218, §32, 33 and 35 (see also Mass.Dist./Munic.Ct.R. 2 (b)), on the grounds that his alleged search of their residence pursuant to an invalid or non-official search warrant was illegal. The Sadlowskis also asserted that Sgt. Benoit had provided false information in the affidavit submitted in support of the issuance of a warrant for the search of their residence. Mr. and Mrs. Sadlowski had a hearing before a Clerk Magistrate who denied their application for a criminal complaint against Sgt. Benoit for insufficient evidence. The Clerk Magistrate's decision was reviewed by Justice Kilmartin, who after a full hearing, denied the Sadlowskis' request for issuance of criminal process against Sgt. Benoit and others and denied the Sadlowskis' motions for specific relief. Justice Kilmartin made his rulings on the ground that Mr. and Mrs. Sadlowski had presented insufficient evidence to warrant the issuance of a complaint against Sgt. Benoit. Clearly, the issues concerning the validity of the warrant raised by the Plaintiffs in their Section 1983 claim were necessarily addressed in the proceeding before Justice Kilmartin. That is, in denying Mr. and Mrs. Sadlowski's application for criminal complaint against Sgt. Benoit, Justice Kilmartin necessarily rejected their assertion that the Search Warrant was invalid and/or was not the one in the possession of Sgt. Benoit at the time of the search. The standard of proof in that proceeding, "probable cause", is virtually the same as the standard of proof which applies in this case, i.e., preponderance of the evidence. The issue now becomes whether there was a "final

judgment on the merits", that is, whether Mr. and Mrs. Sadlowski had a right to appeal the denial of their application for a criminal complaint against Sgt. Benoit.

Generally, a private citizen whose application for criminal complaint has been denied has no statutory or constitutional right to challenge the denial of such application. See Manning v. Municipal Court of Roxbury, 372 Mass. 315, 317 (1977). However, the Massachusetts Supreme Judicial Court ("SJC") has recognized that the Massachusetts District Court Department has provided a right of appeal to a complainant dissatisfied with a clerk's denial of his/her application for criminal complaint. Bradford v. Kniqhts, 427 Mass. 748 (1998) (citing District Court Standard of Judicial Practice 3:21); see also Commonwealth v. Clerk of The Boston Div. of the Juvenile Court Dep't., 432 Mass. 693 (2000). In this case, Mr. and Mrs. Sadlowski appealed the Clerk Magistrate's denial of their application for the issuance of a criminal complaint against Sgt. Benoit and were provided a full hearing by the District Court Judge[4]. Under these circumstances, I find that the SJC would find that the "final judgment" prong of the collateral estoppel test has been met.[5] I will now address whether collateral estoppel

[4]In his written Memorandum of Decision, Justice Kilmartin states that "all parties were given full opportunity to present: [a] such oral testimony as the parties chose to introduce; [b] such exhibits as the parties chose to introduce; and [c] oral argument". Def's Mem., at Ex. C-5. Justice Kilmartin even permitted limited cross-examination of the witnesses. Id.

[5]Plaintiffs assert that Defendants have failed to establish that the validity of the search warrant was determined by Justice Kilmartin because Mr. Sadlowski remembers that at the hearing, Justice Kilmartin stated that he was not ruling on the motion to have the search warrant declared invalid (see Def's Mem., at Ex. C-2). Facts averred by a party

bars Suzanne Sadlowski's Section 1983 claim against Sgt. Benoit based on the alleged illegal search of the Sadlowski residence.

Collateral estoppel bars persons party to a litigation or those in privity with them from relitigating in a subsequent litigation issues decided in the prior litigation. Privity exists where the party to a litigation either substantially controlled or was virtually represented in the prior litigation. Gonzalez v. Banco Central Corp., 27 F.3d 751 (1st Cir. 1994). Determining whether a party was "virtually represented" in a prior litigation such that privity can be said to exist requires a balancing of the equities in which the court should consider, among other factors: whether there was an identity of interests between the non-party and the party to the prior litigation; the non-party's actual or constructive notice of the prior litigation; the adequacy of the representation afforded the party to the prior litigation; and the relationship between the non-party/party. Id., at 761-762.

Mr. and Mrs. Sadlowski filed the application for criminal process against Sgt. Benoit in the Leominster District Court on February 14, 1997. See Defs. Mem., at Ex. C-1. At that time, Suzanne Sadlowski was sixteen years old, that is, she was a minor. The Sadlowskis' application for a criminal complaint alleged that Sgt. Benoit conducted an illegal search of their residence, where Suzanne Sadlowski, their daughter, also resided. Suzanne Sadlowski's interests with regard to the legality of the search conducted by Sgt. Benoit are identical to those of her parents and it is

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in an unsworn memorandum will not be considered by this Court. Nonetheless, because I find that Justice Kilmartin must have considered and rejected the Plaintiffs' arguments concerning the validity of the warrant in denying Mr. and Mrs. Sadlowski's application for the issuance of a criminal application against Sgt. Benoit, for purposes of this Report and Recommendation, it is not necessary for me to consider whether Justice Kilmartin ruled on the motion to invalidate the search warrant.

inconceivable that Suzanne Sadlowski was not aware that her parents were pursuing an application for a criminal complaint against Sgt. Benoit. Obviously, the relationship of parents and child is a close one. This is particularly true in the case of a minor child as reflected by the fact that the parents generally represent the interests of such child in court proceedings. As I have previously stated, Mr. and Mrs. Sadlowski were permitted to appeal the Clerk Magistrate's denial of their application for criminal complaint against Sgt. Benoit and were given a full hearing by Justice Kilmartin. Mr. and Mrs. Sadlowski represented themselves in connection with their application for a criminal complaint against Sgt. Benoit. While Mr. and Mrs. Sadlowski are not lawyers, they have exhibited an extensive knowledge of court rules and procedures. I am confident that they adequately represented themselves in the District Court proceedings. Under these circumstances, after balancing the equities, I find that Mr. and Mrs. Sadlowski were in privity with Suzanne Sadlowski. Therefore, principles of collateral estoppel bar Suzanne Sadlowski's Section 1983 illegal search claim against Sgt. Benoit.

Since I have determined that the Plaintiffs' Section 1983 claim against Sgt. Benoit for an alleged illegal search of their residence is barred by principles of collateral estoppel, it is not necessary for me to address Sgt. Benoit's argument that he is entitled to summary judgment on the grounds that the Plaintiffs' have failed to establish a genuine issue of material fact with respect to this claim.

Suzanne Sadlowski's Section 1983 Claim For Failure To Mirandize; False Arrest; and Intimidation

Suzanne Sadlowski has alleged a Section 1983 claim against Benoit for violation of her Fifth Amendment rights as a result of his failure to mirandize her when he arrested her subsequent to the search of the Sadlowski residence. However, a Miranda violation, in and of itself, does not give

rise to a constitutional claim under Section 1983. Veilleux v. Pershau, 101 F.3d 1, 2 (lst Cir. 1996). This is because Miranda warnings are deemed to be a procedural safeguard rather than a right explicitly guaranteed by the Fifth Amendment. Neighbour v. Covert, 68 F.3d 1508, 1510 (2d Cir. 1995); see Miranda v. Arizona, 384 U.S. 436, 467 (1966). The sole remedy for a Miranda violation is the exclusion from evidence of any self-incriminating statements made by the accused. An accused who has not been advised of his Miranda rights cannot bring a suit for damages under Section 1983. Neighbour, 68 F.3d at 1510-11; Lucero v. Gunter, 17 F.3d 1347, 1350-1 (10th Cir. 1994).

Suzanne alleges that since the search of the Sadlowski residence was illegal, her arrest was tainted thereby and illegal. Since I have found that Suzanne Sadlowski is collaterally barred from challenging the legality of the search, her false arrest claim necessarily fails. Furthermore, Ms. Sadlowski's false arrest claim fails independently of the validity of the search. The charges against Ms. Sadlowski were continued without a finding pursuant to Mass.Gen.L.ch. 276, §87, which provides for pre-trial diversion of juvenile cases. Prior to entering a plea, the individual is placed on probation for a period of time. Id. While such disposition may not technically constitute a conviction, under the Supreme Court's ruling in Heck v. Humphery, 512 U.S. 477, 489 (1994) which bars Section 1983 claims for false arrest unless the criminal proceedings *were terminated in the plaintiff's favor,* it prevents Ms. Sadlowski form bringing a subsequent Section 1983 claim for false arrest. See Nuno v. County of San Bernardino, 58 F.Supp.2d 1127, 1135-7 (C.D. Cal. 1999) (defendant pled nolo contendre to obstruction of a peace officer was barred by Heck from raising a Section 1983 claim against officer for use of excessive force).

Ms. Sadlowski asserts that Sgt. Benoit violated her rights under Mass.Gen.L. Ch. 12, §11H by threatening to tear her room apart during the search.[6] To the extent that

Suzanne Sadlowski is asserting a Section 1983 claim against Sgt. Benoit for threatening to tear up her room and dumping her cosmetic bag in front of her, in order to establish that Sgt. Benoit's actions violated her constitutional rights, Ms. Sadlowski must establish that Sgt. Benoit conducted the search in an objectively unreasonable manner. See Aponte Matos v. Toledo Davila, 135 F.3d 182, 191 (1st Cir. 1998); Martin v. Rodriquez, 154 F.Supp.2d 306, 314 (D.Conn. 2001). Quite frankly, while Ms. Sadlowski may have been offended by Sgt. Benoit's manner, her allegations do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably.

For the reasons set forth above, I recommend that summary judgment enter for Sgt. Benoit on the Plaintiffs' Section 1983 claims.

Plaintiffs' State Law Claims

Sgt. Benoit argues that he is entitled to summary judgment as a matter of law on substantially all of the state law claims asserted by the Plaintiffs. Plaintiffs originally filed this action in state court. The action was removed to this Court by Sgt. Benoit on the grounds that this Court had jurisdiction over Plaintiffs' Section 1983 claims. I have recommended that summary judgment enter for Sgt. Benoit on Plaintiffs' Section 1983 claims. I further recommend that this Court refuse to exercise pendent jurisdiction over Plaintiffs' remaining state law claims and therefore, that this

[6]The Massachusetts Civil Rights Act, Mass.Gen.L. Ch. 12, §11H prohibits an individual from interfering with the rights of another by means of threats, intimidation or coercion. Section 1983 does not require that the violation of a person's rights have occurred by means of threats, intimidation or coercion.

action be remanded to state court for further proceedings.

Conclusion

I recommend that:

1. Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122) be allowed as to Plaintiffs' federal claims and that Plaintiffs' state law claims be remanded to state court.

Notice to the Parties

The parties are advised that under the provisions of Rule 3(b) of the Rules for the United States Magistrates in the United States District Court for the District of Massachusetts, any party who objects to these proposed findings and recommendations must file a written objection thereto with the Clerk of this Court WITHIN 10 DAYS of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis of such objection. The parties are further advised that the United States Court of Appeals for this Circuit has indicated that failure to comply with this rule shall preclude further appellate review by the Court of Appeals of the District Court's order entered pursuant to this Report and Recommendation. See United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Scott v. Schweiker, 702 F.2d 13,14 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-379 (1st Cir. 1982); Park Motor Mart,Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). See also, Thomas v. Arn, 474 U. S. 140, 106 S. Ct. 466.

"s/Charles B. Swartwood III"

CHARLES B. SWARTWOOD, III
MAGISTRATE JUDGE

APPENDIX D

ADOPTION BY DISTRICT COURT JUDGE OF REPORT AND RECOMMENDATION

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Sadlowski,
Plaintiff(s)

V.

Benoit, et al.,
Defendant(s),

CIVIL ACTION
NO. 98-40194-NMG

GORTON, D. J.

ORDER FOR REMAND

In accordance with the Court accepting and adopting the Report and Recommendation of Magistrate Judge Swartwood dated 3/1/02, allowing the defendant's motion for summary judgment as to the plaintiff's federal claims and that plaintiff's state law claims be remanded to state court it is hereby ORDERED that the above-entitled action be and hereby is REMANDED to Worcester Superior Court for further proceedings.

By the Court

DATED: March 4, 2002

"s/M.S. Castles"

Deputy Clerk

APPENDIX E

AFFIDAVIT OF JOCELYN SADLOWSKI

(from Plaintiffs Amended Opposition (Docket No. 141, Exhibit P) to Defendant Benoit's Motion for Summary Judgment)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No: 98-40194

Michael Sadlowski	]	
Jocelyn Sadlowski	]	
Suzanne Sadlowski	]	
Plaintiffs	]	AFFIDAVIT OF
	]	JOCELYN
v	]	SADLOWSKI
	]	
Louis Benoit	]	
.Leominster Police Detective	]	
Defendant	]	
	]	

The document labeled search warrant that was shown at the 85 Harvard Street residence on August 23, 1996, had striking differences versus search warrant 9661SW-29 that is in the Leominster District Court Clerk's Office, like:

- the words "SEARCH WARRANT" were centered and in orange color,
- the section for the items to be searched for was in blue color;
- the form lettering was in black, (the form lettering on search warrant 9661SW-29 is in brown color),
- the name of Jeffrey Sadlowski was not on it,
- it did not have any signatures,
- the format was quite different

Signed under the pains and penalties of perjury, this 9th day of October in the year 2001.

Plaintiff pro se,

"s/Jocelyn Sadlowski"

Jocelyn Sadlowski
85 Harvard Street
Leominster, MA 01453
(978) 537-1891

APPENDIX F

SECTION OF SUZANNE SADLOWSKI'S DEPOSITION

(from Plaintiffs Amended Opposition (Docket No. 141, Exhibit C) to Defendant Benoit's Motion for Summary Judgment)

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL SADLOWSKI,	)	
JOCELYN SADLOWSKI,	)	
SUZANNE SADLOWSKI,	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	No.98-40194
	)	
	)	
LOUIS BENOIT,	)	
LEOMINSTER POLICE	)	
DEPARTMENT,	)	
Defendants.	)	

DEPOSITION of SUZANNE C. SADLOWSKI, taken on behalf of Defendants, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Linda A. Menard, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Merrick, Louison & Costello, 67 Batterymarch Street, Boston, Massachusetts, on Tuesday, May 30, 2000, commencing at 12:30 p.m.

shoulder, or however you were doing it, were you able to get a look at the color of the form?

A. Yeah, I glanced over. It said "search warrant" at the top.

Q. You could see that?

A. Yeah. It was plainly obvious. Something in orange letters is, you know, like kind of bold and striking, you know.

Q. Let me show you what's been marked as Exhibit No. 3 in your mom's deposition. See where it says "search warrant" on that?

A. Yes.

Q. Is that what it looked like when you were looking over the shoulder of your brother?

A. No.

Q. Tell me how it differed from what I have shown you, which is one of the pages in Exhibit No. 3 of your mom's deposition?

A. "Search warrant" was -- the word "search warrant" was centered more in the middle. It was colored orange.

Q. Would the color of it be different than the color of what's in front of you right now?

A. Yeah. This is kind of like brown.

Q. When you say "this", I'm going to say if you can refer to that as Exhibit No. 3, if you could.

A. Exhibit No. 3.

Q. Is brown?

A. Is brown.

Q. And the documents you were shown was?

A. What I saw was orange -- well, the lettering at the top was orange.

Q. How else was it different than what's *in* front of you now?

A. It was different because it didn't at all seem to be set up as this. It was more like a typed paragraph,

something written, typed paragraph. It just doesn't look anything like what I saw; and it was very flimsy paper it was on, it seemed like.

Q. And you are telling me all this information based on what you could see as your brother read the search warrant; is that right?

A. From what I saw glancing at it, when he looked at it, and then when I held it.

Q. At some point after Jeffrey was through reading it, Benoit gave it to you?

A. Yes.

Q. And you took it from him?

A. Yeah. I held it in my hand, yeah.

Q. How long did you hold it in your hand?

A. I don't know; maybe a minute.

Q. Did you read it?

A. I didn't read it, no.

Q. Other than the word "search warrant" being in what you described to be orange letters in the middle of the page at the top of the page, do you remember any other words on that document?

A. I remember looking down at one word noticing the word "marijuana".

Q. Do you recall if what you read is similar or the same as the exhibit I have just shown you, which I forget the number, so can you read that to me, the number of the exhibit?

A. Five.

Q. Exhibit 5 from your mom's deposition?

A. It was -- like I said before, it was different like the written-in paragraph.

Q. When you say the written-in, did that look